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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 672

NEW YORK LIFE INSURANCE COMPANY, RELIANCE LIFE INSURANCE COMPANY, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, THE UNION CENTRAL LIFE INSURANCE COMPANY,

Petitioners,

vs.

CHARLES M. LAKE, TRUSTEE IN BANKRUPTCY OF EUGENE M. CALLIS,

Respondent.

BRIEF AMICUS CURIAE LIFE INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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CONSENT TO FILING

All of the parties in the case have consented to the filing of this brief on behalf of the Life Insurance Association of America as an Amicus Curiae.

INTEREST OF AMICUS CURIAE

The Amicus Curiae, hereinafter referred to as the Association, is an organization of legal reserve life insurance companies. Its 106 member companies of the United States and Canada have over 85% of the life insurance in force with legal reserve life insurance companies in the United States. The Association was formed in 1906, and under its constitution is charged with the responsibility "to promote the welfare of its policyholders and the interest of life insurance". Its position here is taken in behalf of the industry as a whole, because the restrictions placed upon company operations pursuant to the Court of Appeals decision adversely affect the interests of policyholders and beneficiaries.

STATEMENT

The Association's purpose in this supporting brief is to present special and additional reasons why the writ should be granted. The Association is especially concerned over the question whether the 1938 amendment to Section 70 of the Bankruptcy Act nullifies the rule enunciated by this Court in 1921 in *Frederick* v. *Fidelity Ins. Co.*, 256 U.S. 395, and imposes on life insurance companies a new rule of liability to the trustee in bankruptcy. For over 30 years, up until the decision of the Court of Appeals below, life insurance companies have been following the rule of this Court in the *Frederick* case in paying life insurance proceeds and all other policy benefits. The association joins in seeking review and reversal of the Court of Appeals decision below in order that ultimate effect may be given to the judgment of the District Court below which we think correctly construed the 1938 amendment as *not* requiring the overturn of settled practices of the companies in

promptly complying with their contracts. We respectfully urge that departure from this long-established practice should not be required without full consideration and decision by this Court.

REASONS FOR GRANTING THE WRIT

The public importance of getting the question in this case settled is made manifest by the fact that the decision of the Court of Appeals will entail hardships upon policyholders and beneficiaries of a nation-wide business and will also place the life insurance industry itself in an unfortunate position. Under this decision, whenever the companies receive demands for loans or surrender values or for proceeds, under the terms of the policies as fixed by state laws, they must either:

(1) delay payments pending investigation of possible bankruptcy proceedings,

or

(2) pay immediately (as they have done heretofore) *and* expose themselves to the hazard of double liability.

The instant case has to do only with loan values, but it is clear from the opinion of the Court of Appeals that the rule of the case will also apply to, and cause delay in, all other payments such as surrender values and death proceeds.

No full appreciation of what is at stake in this case can be had without a consideration of (a) the role of loans and cash surrenders in the welfare of the policyholders themselves and the importance to their dependents and other beneficiaries of continuing the companies' practices

of immediate payment of policy proceeds, and (b) the volume of that part of the companies' operations which have to do with payment of such loans, surrender values and proceeds.

Promptness of the companies in making policy loans and payment of other policy benefits are important factors in the welfare of a vast number of policyholders and beneficiaries. A salient feature of life insurance operations is that the insuring public over the years have come to rely on the immediate availability of all policy benefits under the policies. It is of the very essence of the life insurance business to be a present help in trouble. The companies for generations have built up a public service by immediate payment of loans, surrender values and other proceeds. Much of all that would be lost if the long established system of prompt payments must now be disturbed.

The possible extent of the hardships to policyholders and beneficiaries is indicated by the volume of such payments. At the end of 1953 there were outstanding over nine million individual policy loans by life insurance companies doing business in the United States and these loans aggregated nearly three billion dollars. In 1953 alone, over half a billion dollars in such policy loans under legal reserve contracts were made, and cash surrender payments to policyholders amounted to almost $700,000,000. The aggregate of life insurance benefit payments in 1953 was over four and one-half billion dollars. (The figures set forth in this paragraph are taken from the Life Insurance Fact Book, 1954 Edition, published by the Institute of Life Insurance, pp. 33 and 79.)

Some indication of the extent of the double liability hazard to the companies may be derived from the frequency

of bankruptcy proceedings. In the fiscal year ending June 30, 1954 alone there were over 53,000 bankruptcy filings. Had 1954 been a less prosperous year, these figures doubtless would be much larger. For example, bankruptcies during the fiscal year ending June 30, 1935, totaled almost 70,000. No precise estimate can be made as to the proportion of policyholders among the bankrupts (at least a majority is probably a fair guess), or of the amount of policy loans involved (in the instant case the policy loans aggregated $45,000). For practical purposes, the chances of recovering the amount paid this or any other bankrupt are nil. Moreover, any such double payments would necessarily be borne by policyholders, either in the form of reduced policyholder dividends or in the increase in future premium rates.

Aside from the new hazard, the impact of the decision below on life companies is immediate and disturbing. It requires a basic change in operations, since in place of existing procedures for immediate payments the companies would be required to set up new machinery and processes for investigating possible bankruptcies before making any payments. The facts of this case illustrate the inadequacy of representations by the insured as a substitute for investigations; for here the bankrupt made a written representation to most of the companies that no bankruptcy proceedings were pending. Most life insurance is held in companies which, unlike most banks and other creditors, do business on a national scale rather than only in local communities. The facts of this case also demonstrate that it would not be sufficient for the companies to check possible bankruptcies only in the District Court where their records show the insured resides; for here the companies' records showed the bankrupt to be a Pennsylvania resident but the referee held him a resident of Maryland. The expense of

making the necessary investigations would, of course, be substantial; but the resulting delay in payments, with consequent inconvenience to policyholders and beneficiaries when they may be in desperate need for funds, is the vital consideration involved in this case.

CONCLUSION

The Association respectfully urges, on behalf of all life insurance companies, their policyholders and beneficiaries, that this Court grant the petition for certiorari.

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